EXHIBIT A

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:	Mark Johnson, Chair Kate Giard Dave Harbour James S. Strandberg G. Nanette Thompson
In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	R-03-07

COMMENTS OF ACS of ANCHORAGE, INC., ACS OF FAIRBANKS, INC., AND ACS OF ALASKA, INC.

I. INTRODUCTION

ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (hereinafter "ACS" or "ACS LECs"), hereby submit comments in response to the Commission's Order Opening Docket and Setting Procedural Schedule in docket R-03-7. The Commission opened this docket to consider and respond to the Triennial Review Order[1] ("Triennial Review Order") released by the Federal Communications Commission ("FCC") on August 21, 2003. The Triennial Review Order directed each state to undergo specific fact finding and analysis to determine whether certain unbundled network elements ("UNE"s) should be required to be made available by an incumbent LEC ("ILEC") within that state.

ACS is the ILEC in the three Alaskan markets relevant to these comments: Anchorage, Fairbanks, and Juneau. It was formed in 1999 through the acquisition of Anchorage Telephone

[1] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147), *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36 (re. Aug. 21, 2003) ("Triennial Review Order").

Utility, a non-rural municipal telephone company serving the Anchorage market,[2] as well as three rural telephone companies formerly owned by Pacific Telecommunications, Inc.[3]

ACS urges the Commission to provide unbundling relief to ACS in all relevant geographic markets for: (1) mass market switching; (2) dedicated transport; (3) shared transport; and (4) DS-3 and dark fiber loops. ACS demonstrates in these comments that in all these markets – Anchorage, Fairbanks and Juneau – requesting telecommunications carriers are not impaired without access to unbundled local circuit switching. Further, a batch cut process is not necessary in any of these markets based on the applicable impairment analysis. With respect to the other elements, high-capacity loops and dedicated transport, ACS believes the record will show that there is no impairment without access to these UNEs, but ACS will request discovery from competing facilities providers so this impairment analysis can be completed.[4]

II. BACKGROUND

Since the enactment of the Telecommunications Act of 1996, ACS has experienced significant competition in its local exchange markets in Anchorage, Fairbanks and Juneau. In Anchorage, ACS has lost approximately 50 percent of the local exchange market, which represents a level of competition that is unprecedented in other markets. In a recent RCA decision, a commissioner noted in dissent, "Anchorage's level of competition in the retail telephone market exceeds that of every other city in the Lower 48 [states] by nearly 20 points."[5]

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[2] Now known as ACS of Anchorage, Inc.

[3] PTI Communications of Alaska, Inc. (which became ACS of Fairbanks, Inc.), Telephone Utilities of the Northland (ACS of the Northland, Inc.), and Telephone Utilities of Alaska (ACS of Alaska, Inc.).

[4] ACS does not address here the demarcation between "enterprise" and "mass market" customers for purposes of switching, Triennial Review Order ¶ 419, because ACS believes the RCA will find no impairment for the mass market switching UNE. If GCI presents contrary evidence, ACS will address this issue in its reply to the Commission on February 26, 2004.

[5] *Investigation of the Local Exchange Revenue-Requirement, Depreciation, Cost-of-Service, Rate Design Studies, and Tariff Rate Revisions Designated as TA429-120, TA431-120, and TA457-120 Filed by ACS of Anchorage, Inc.*, Order Granting Reconsideration, in Part;

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General Communication, Inc. ("GCI"), ACS' primary competitor, alone has gained approximately 45 percent of the market in Anchorage by ACS' own estimate.[6] Likewise, since entering the rural markets of Fairbanks in 2001 and Juneau in 2002, GCI has garnered over 22 percent of the Fairbanks local exchange market and 30 percent of the Juneau market.[7]

GCI is well-known in Alaska markets as the incumbent cable television and cable modem services provider. GCI's cable television facilities pass over 95 percent of households in Alaska.[8] In addition, GCI has the largest market share of any long distance provider in Alaska and owns one of the two major undersea cables that link Alaska to the lower 48 United States.[9] Bolstered by its name recognition and financial resources garnered as the incumbent cable television provider throughout most of Alaska, GCI has gained significant share of both residential and business customers in the local exchange service markets in Anchorage, Fairbanks and Juneau. Based on GCI's ever growing market share and its promises to implement cable telephony and leave ACS' network entirely, the bargaining power between GCI and ACS in negotiating reasonable market rates for network elements has become equalized in these local exchange markets.

The benefit of competition has been that nearly every Anchorage customer, business and

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Granting Confidentiality; Making Rates Interim But Not Refundable; Subsuming Issues Into Docket U-01-34, Amending Docket Title; Affirming Electronic Ruling Extending Filing Deadline; and Closing Docket U-03-99, U-01-34 (27), Dissenting Statement of Commissioner Kate Giard at 1 (Reg. Comm. of Alaska, Dec. 8, 2003) ("RCA Reconsideration Order"). Of the approximately 50 percent market share lost, 45 percent of the loss is attributable to GCI, while the remaining loss is attributable to AT&T.

[6] Affidavit of Steve Pratt, In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies, R-03-07, at ¶ 2 (Jan. 12, 2004) ("Affidavit of S. Pratt").

[7] *Id.*

[8] Prefiled Testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc., Before the Senate Committee on Commerce, Science and Transportation, Communications Subcommittee at 3 (April 2, 2003).

[9] *Id.*

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residential, has a choice of facilities-based providers.[10] However, the extremely high levels of competition imposes a unique hardship on ACS because, despite the competition, ACS is required to continue to provision UNEs to its competitors at rates that are well below cost, rendering ACS unable to obtain a reasonable return on its investment. The market share losses cited above are not just at the margins of ACS's business. The loss to ACS is suffered at the core of its business. ACS' markets are experiencing exactly the type of facilities-based competition that the FCC contemplated in adopting its local competition rules. GCI has its own switching capability in Anchorage, Juneau and Fairbanks, and has constructed its own loops in two subdivisions in Anchorage. By ACS' estimates, GCI is able to access about 92% of customers in Anchorage, 77% of customers in Fairbanks and 57% of customers in Juneau using its own switches. GCI has reported that from the switches it currently has in place, it is capable of reaching 92% of local customers in Anchorage, 71% in Fairbanks and 48% in Juneau from its proprietary switches in each of these markets.[11] GCI serves a quarter (25%) of its lines in these combined markets entirely over its own facilities relying on no UNEs from ACS whatsoever.[12] Further, GCI has conducted trials of its cable telephony service, and projected that it would be able to commercially provide service over its own cable facilities in Anchorage beginning in 2004.[13] GCI has estimated that the company plans to migrate virtually all of its telephone customers to its monopoly cable network over five years, beginning with 10,000 customers in

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[10] In fact, the only Anchorage customers that are denied a choice are those that are being served on GCI's LEC facilities. GCI is not required under section 251 to share these facilities with ACS or other carriers.

[11] General Communication, Inc. SEC Form 10-K at 32 (Dec. 31, 2002).

[12] Declaration of Frederick W. Hitz, III, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, at ¶ 5.

[13] Anchorage Daily News at E-5, *Fresh Connections, GCI Plans to switch local customers over to its 'telephony' cable system* (Mar. 2, 2003).

2004.[14] As demonstrated in these comments, this level of facilities-based competition warrants an end to certain unbundling requirements and the beginning of market-based competitive rates for these network elements.

III. THE FCC REQUIRES THE RCA TO CONDUCT A GRANULAR IMPAIRMENT ANALYSIS WITH RESPECT TO CERTAIN UNES IN STRICT ACCORDANCE WITH THE STANDARDS SET FORTH IN THE TRIENNIAL REVIEW ORDER.

Sections 251 and 252 of the Communications Act of 1934, as amended ("the "Communications Act"), govern interconnection between local telephone exchange companies, including the requirements that ILECs permit requesting competitors to interconnect with the ILEC's existing network and provide competitors with access to unbundled network elements at regulated rates.[15] In 1996, the FCC first adopted rules to implement new Sections 251 and 252, which were incorporated into the Communications Act by the Telecommunications Act.[16] To determine which UNEs an ILEC must make available, the Act requires the FCC to determine (1) as to any proprietary network element, whether access to the UNE is "necessary;" and (2) as to *all* network elements, whether lack of access to the UNE pursuant to Sections 251(c) and 252(d) would "impair" the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.[17]

The FCC "has been told twice, once by the Supreme Court and once by the D.C. Circuit,

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[14] Testimony of Dana Tindall on Behalf of General Communication, Inc., *Petition of GCI Communications Corp. for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage a/k/a ATU Telecommunications for the Purpose of Instituting Local Exchange Competition*, U-96-89, Public Hearing, Volume X at 835 (Nov. 6, 2003). During its second quarter 2003 investor call, GCI announced its goal to roll out cable telephony to between 8,000 and 12,000 lines in 2004 and doubling deployment in the following year. General Communication, Q2 2003 Financial Release Conference Call, Event Transcript, Fair Disclosure Financial Network at 12 (July 31, 2003).

[15] 47 U.S.C. §§ 251(c)(2), (3).

[16] *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 et seq.

[17] 47 U.S.C. § 251(d)(2)(A), (B).

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that it has failed to implement unbundling in a reasonable manner because it did not adopt appropriate principles for limiting its application."[18] In its first Order addressing ILEC unbundling requirements, the FCC interpreted the "necessary" and "impairment" standards "very broadly."[19] The United States Supreme Court vacated the FCC's broad interpretations of "necessary" and "impair" determining that that the statute imposes a limiting principle.[20] "The Court stated 'that the Act requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act, which it has simply failed to do.'"[21]

The FCC then attempted to promulgate standards that met the "necessary and impair" test as the Supreme Court clarified it.[22] Its new unbundling rules were again found overbroad, however, this time by the U.S. Court of Appeals for the District of Columbia Circuit.[23] The court was critical that the FCC did not adequately consider the "impairment" standard, but instead adopted rules that promoted the broadest possible unbundling. The court chastised the FCC's second impairment definition as requiring only economic entry barriers at the same level as would be encountered in any competitive market—a level the court rejected as inadequate under the statute.[24] The court also was critical of the FCC for adopting national UNE rules that

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[18] Triennial Review Order ¶ 2.

[19] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd at 15641, 15641 ¶ 282 ("[n]ecessary means . . . that an element is a prerequisite for competition and that "'impair' means 'to make or cause to become worse; diminish in value'"). *See also* Triennial Review Order ¶ 12.

[20] *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 388 (1999).

[21] Triennial Review Order ¶ 18 (quoting *AT&T,* 525 U.S. at 388).

[22] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999).

[23] *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002); *reh'g denied*, (D.C. Cir. 2002).

[24] *Id.* at 427.

failed to take into account local differences in market conditions.[25] It concluded that "UNEs will be available to CLECs in many markets where there is no reasonable basis for thinking that competition is suffering from any impairment of a sort that might have [been] the object of Congress's concern."[26] The Triennial Review Order is the FCC's response to the D.C. Circuit's remand order.

The Triennial Review Order grants certain relief to ILECs from unbundling requirements for some UNEs and specifies under what circumstances additional relief will be granted. In this Order, the FCC establishes specific requirements for "impairment" determinations as to certain UNEs, including loops, switching, transport and OSS functions, and requires that each state conduct proceedings to determine where competitive local exchange carrier ("CLEC") impairment exists as to those UNEs.

Access to UNEs may not be required unless the competitor seeking access would be "impaired" in its ability to provide the services that is seeks to offer.[27] In the Order, the FCC divides the market for different network elements between enterprise and mass market, and delegates to the states a significant role to determine whether "impairment" exists in a particular geographic market for certain network elements, which are: (1) mass market circuit switching, (2) high-capacity and dark fiber loops, (3) dedicated transport, and (4) shared transport. The states have no discretion to make any finding of impairment or non-impairment as to other elements, and even as to these elements, the states are bound to follow the procedures and

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[25] *Id.* at 422.

[26] *Id.* The D.C. Circuit stated that "[o]ne reason for such market-specific variations in competitive impairment is the cross-subsidization often ordered by state regulatory commissions, . . . [which] usually brings about undercharges for some subscribers (usually rural and/or residential) and overcharges for the others (usually urban and/or business)." *See also* Triennial Review Order ¶ 32.

[27] 47 U.S.C. §251(d)(2)(B).

substantive tests established by the FCC in the Order.[28]

In the Order, the FCC states that it recognizes "the difficulties and limitations" in UNE-based competition.[29] "We are very aware that excessive network unbundling requirements tend to undermine the incentives of both [ILECs] and new entrants to invest in new facilities and deploy new technology."[30] Thus, the FCC adopts an impairment analysis that will limit the amount of unbundling ILECs must do in the future. The FCC states that a CLEC is "impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic."[31]

For each element that the state is required to perform an impairment analysis, the FCC sets forth detailed triggers and tests, which are described in detail in these comments. For each particular analysis, the FCC specifies the types of evidence a state must consider in making an impairment evaluation for a particular UNE. Among the evidence that the FCC says is "most persuasive" in evaluating impairment is the availability of the network element outside of the ILEC's network.[32] For instance, if a new entrant has deployed an element (*e.g.*, a switch or transmission facilities) in a market, then the state commission should consider this as evidence that barriers to entry in that market are surmountable as to that element. Although this test is not by itself dispositive, the RCA should find that GCI's vastly deployed switching facilities along

[28] Triennial Review Order ¶ 186 ("[T]o ensure that the proper degree of unbundling occurs, we rely, in certain instances when such analysis is necessary, on market-by-market fact-finding determinations made by the states. While we delegate to the states a role in the implementation of our federal unbundling requirements for certain network elements that require this more granular approach, we make clear that any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations we set forth herein.").

[29] *Id.* at ¶ 3.

[30] *Id.* at ¶ 3.

[31] *Id.* at ¶ 7.

[32] *Id.*

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with its substantial market share in ACS' markets warrants ACS relief from unbundled switching obligations.

In order to satisfy the D.C. Circuit's mandate for a granular analysis, the FCC delegates to states the duty and the authority to determine whether competitive carriers are impaired with respect to the UNEs listed above, within very specific guidelines established in the Triennial Review Order.[33] The FCC explicitly directs states to conduct an analysis of these elements to determine whether impairment exists in individual markets for these UNEs.[34] The RCA must review all the evidence and complete its analysis by July 2, 2004.[35]

IV. THE RCA MUST FIND THAT GCI IS NOT IMPAIRED WITH RESPECT TO MASS MARKET SWITCHING.

A. The RCA Should Define The Geographic Market For Circuit Switching As Each LEC's Service Area.

The FCC adopts a market-specific approach to impairment analysis: the requirement to provide UNEs must be limited to geographic markets in which market conditions justify the mandate. Thus, in conducting the switching impairment analysis, states must first define the geographic market they will evaluate by determining the relevant geographic area to include in

[33] *Id.* at ¶ 189 ("To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law").

[34] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

[35] July 2, 2004 is nine months from the effective date of the Order, which was October 2, 2003. Order ¶¶ 493, 527 (delegating to the states granular impairment assessments for mass-market switching to be completed within nine months of the effective date of the order); *see also, id.* at ¶¶ 394, 417 ("we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled transport"). If a state fails to complete the inquiry required in the Order within the specified nine-month period, parties may petition the FCC to do so in the state's place. 47 C.F.R. § 51.320. *See also* Triennial Review Order ¶ 339 (loops), ¶ 417 (dedicated transport), ¶ 527 (circuit switching).

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each market.[36] To determine the geographic market for circuit switching, the FCC directs state commissions to consider such factors as: (i) the locations of customers actually being served by competitors; (ii) the variation in factors affecting competitors' ability to serve each group of customers; and (iii) the competitors' ability to target and serve specific markets economically and efficiently using currently available technologies.[37] State commissions should consider how UNE loop rates vary across the state and how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically.[38]

ACS urges the RCA to establish market definitions that accurately reflect market realities. For instance, the Triennial Review Order provides that states should not define the market so narrowly "that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market."[39] According to Former FCC Chief Economist, Dr. Howard Shelanski, "[t]he FCC's admonition implies at a minimum that switching markets should not be defined in such a way that divides areas that could economically be served by a single switch."[40] Thus, the RCA should not define the switching markets as small as the wire center because "there may be adjacent tandems or wire centers that could be economically served with some of the same switching capacity."[41] In

[36] Triennial Review Order ¶ 495.

[37] *Id.*

[38] *Id.* at ¶ 496.

[39] *Id.* at ¶ 495.

[40] Declaration of Dr. Howard Shelanski, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1), at 11 (Jan. 12, 2004) ("Declaration of H. Shelanski").

[41] Declaration of H. Shelanski, at 11. There is no evidence that the market be defined as the wire center or a smaller unit.

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contrast, the market should not defined as wide as the state,[42] thereby making the market "impractical in its breadth."[43]

"The correct definition depends on the scope and scale of customers that can be economically served from a given switch."[44] The RCA, thus, should find that the relevant geographic market of each of the ACS LECs coincides with that LEC's service area. In Anchorage, for example, the RCA has established a single UNE loop rate and uniform retail rates for the service area, and GCI is collocated in 100% of the main switching centers in this service area. In each LEC service area, GCI is able to serve the entire customer base from a single 5E switch.[45] According to Dr. Shelanski, this is the correct market definition because there is "no evidence to suggest that GCI cannot continue to add remote switching capability and transport that extends the reach of its existing switches to new customers in a given ACS LEC service area."[46] Therefore, ACS recommends that each LEC's local exchange service area be the presumptive "market" for purposes of analyzing mass market switching.

B. GCI Is Not Impaired Without Access to Unbundled Mass Market Local Circuit Switching.

In the Triennial Review Order, the FCC establishes a separate standard for access to unbundled local circuit switching applicable to enterprise customers and mass market customers. For enterprise customers, the FCC established on a national basis a presumption that the ability

[42] Triennial Review Order ¶ 495.

[43] Declaration of H. Shelanski, at 11.

[44] *Id.* at 11.

[45] *Id.*

[46] *Id.* at 11, 12 ("If GCI can collocate a remote terminal and use an existing switch to serve those customers that GCI does not currently reach, then those customers should be included in the same market so long as the costs of collocation and transport do not render use of the existing switch uneconomic for those new customers . . . . Only if such costs are so high as to make it uneconomic or inefficient to use an existing host switch to serve those customers should the market be defined more narrowly.").

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of competitors to serve enterprise customers is not impaired without circuit switching.[47]

With respect to mass market switching, the FCC concluded that "because the record provides insufficient evidence concerning the characteristics of particular markets, [the FCC] find[s] it appropriate to ask the states to assess impairment in the mass market on a market-by-market basis."[48] The FCC recognized that "a more granular analysis may reveal that a particular market is not subject to impairment" without unbundled switching.[49] Therefore, it "provide[d] [two] enumerated impairment triggers and criteria for the states to apply in individual markets."[50] A non-impairment finding using the self-provisioning trigger requires the state to find three or more competing providers serving mass market customers in a particular market using their own switches.[51] Under the competitive wholesale facilities trigger, the state commission must find two or more competing providers each offering wholesale local switching of their own switches.[52] However, even if neither of the competitive provisioning triggers are satisfied, the state must examine evidence of the *potential* for switch self-provisioning to determine whether relief from unbundling may be warranted. As part of this analysis, the FCC requires states to evaluate evidence of actual competitive deployment of switches and operational and economic

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[47] Triennial Review Order ¶ 451. State commissions have 90 days from the effective date of the Order to petition the FCC to rebut the national finding in individual markets based on specific operation and economic evidence. Triennial Review Order ¶¶ 457, 457. The RCA has decided not to rebut the FCC's finding as to ACS, and GCI does not oppose that decision. *Order Opening Docket and Setting Procedural Schedule*, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1), at 8 (Nov. 28, 2003); GCI's Response to Notice of Special Public Meeting, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1), at 9 (Sept. 19, 2003).

[48] Triennial Review Order at ¶ 493

[49] *Id.* at ¶ 461.

[50] *Id.* at ¶ 424.

[51] *Id.* at ¶ 503.

[52] *Id.* at ¶¶ 504-05.

barriers to entry.[53] If the potential deployment analysis is satisfied, the state may make a non-impairment finding.[54]

Because both of the FCC enumerated triggers, the self-provisioning trigger and the competitive wholesale facilities trigger, require that there be more than two competing providers in the market, it is unlikely that these triggers will be met in the local exchange service markets in Alaska. However, the RCA should make a finding of non-impairment under the potential deployment analysis. As part of the potential deployment analysis, the FCC lists three types of evidence states should examine to determine whether the market is suitable for multiple, competitive supply:[55] (1) whether the competitor is using its own switches; (2) the role of potential operational barriers; and (3) the role of potential economic barriers associated with the use of competitive switching facilities. The first of these is to be given the greatest weight, as discussed below.

1. The RCA Should Find No Impairment Because GCI Is Serving The Mass Market With Its Own Switches.

Evidence of switch deployment is the best indicator of whether CLECs are able to overcome barriers to entry for facilities deployment.[56] The existence of one self-provisioned switch might, in some cases, justify a finding of no impairment if the RCA determines the market can support multiple, competitive supply.[57] In fact, the FCC found that "to the extent there is a switch in an area serving the local exchange mass market, this fact must be given

[53] *Id.* at ¶¶ 506, 508-20.

[54] *Id.* at ¶ 463. Even if the state commission finds impairment in mass market switching, the Order requires consideration of whether such impairment can be remedied by a narrower rule that makes unbundled switching temporarily available for a minimum of 90 days for customer acquisition purposes, rather than for an indefinite period. *Id.* at ¶ 523.

[55] *Id.* at ¶ 506.

[56] *Id.* at ¶ 435.

[57] *Id.* at ¶ 510.

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particularly substantial weight. The existence of a competitor that is serving the local exchange mass market with its own switch provides evidence that the mass market can be served effectively."[58]

The market facts for Alaska bear no relation to the facts on which the FCC made its national finding of impairment in mass-market switching. Even though unbundled switching has been available to CLECs in Alaska since 1997, GCI, the most significant competitive entrant into Alaska's local telephone market, has relied primarily on its own switches to serve its residential and business customers alike.[59] As of December 2003, GCI was serving over 34% of customers in ACS' territory over GCI's own switches.[60] That percentage is "many multiples" greater than the figure the FCC relied on in its national finding of impairment due to mass-market switching.[61] Indeed, the FCC made a national non-impairment finding for DS-1 or greater capacity loops where a lower percentage of CLECs were serving business lines with their own switches.[62] "[T]he FCC found less than 3% of mass-market loops nationwide to be served over CLEC-owned switches and hence found impairment. But GCI's market share in Anchorage of 45% (92% of which lines GCI serves over its own switches), is 15 times greater than the market

[58] Triennial Review Order ¶510; *see also, id.* at ¶¶ 512, 513, 517 (emphasizing that the analysis should include consideration of how costs affect the likelihood of entry into the market).

[59] GCI serves approximately 5% of its customer lines through the UNE platform. Declaration of H. Shelanski, at 9 (citing General Communications, Inc. SEC Form 10-Q at 37 (Sept. 30, 2003)).

[60] Affidavit of S. Pratt, at ¶ 7. GCI reports that it serves approximately 87% of its customer lines statewide through GCI's own switch and transport facilities with leased local loops. General Communications, Inc. SEC Form 10-Q at 37 (Sept. 30, 2003).

[61] Declaration of H. Shelanski, at 10. *See also* Triennial Review Order ¶ 438.

[62] Triennial Review Order ¶ 437. As stated in the Declaration of H. Shelanski, "[t]he FCC found that CLECs were serving at least 13 million business lines as of year-end 2001 over their own switches, a figure it found to constitute strong evidence against impairment in business switching. There were 53.7 million local business lines in the U.S. at year end 2001 according to the FCC's 2001/2002 Statistics of Communications Common Carriers Report at 22, of which the 13 million served over CLEC switches represented 24%." Declaration of H. Shelanski, at 10 n.4.

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share on which the FCC relied."[63]

In Anchorage, GCI delivers service primarily through its own switch and has never utilized available unbundled switching, yet has been phenomenally successful in obtaining approximately 45% of the local exchange market.[64] GCI has its own Lucent 5E switches located in Anchorage, Fairbanks, and Juneau, as well as various remote switches in each of those markets.[65] Further, GCI has stated in its SEC filings that it is capable of reaching 92% of local customers in Anchorage, 71% in Fairbanks and 48% in Juneau from its proprietary switches in each of these markets.[66] GCI, to date, has captured approximately 45% of local exchange customers in Anchorage, approximately 30% in Juneau, and over 22% in Fairbanks.[67] GCI's success in entering these three relevant markets using its own switches shows that the mass market can be served effectively without unbundling.[68] The FCC requires that this evidence be given "particularly substantial weight."[69] Indeed, GCI's competitive entry has been so rapid and successful that GCI's own senior management stated that ACS "is arguably no longer dominant."[70]

Additionally, GCI's name recognition and market position as the incumbent cable services provider gives GCI significant leverage in the local exchange market. According to Dr.

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[63] Declaration of H. Shelanski, at 9.

[64] Affidavit of S. Pratt, at ¶ 2, 3.

[65] *Id.* at 4.

[66] General Communications, Inc. SEC Form10-K at 32 (Dec. 31, 2002). ACS has slightly differing estimates of the reach of GCI's current switch facilities. *See* Affidavit of S. Pratt, at ¶ 5.

[67] Affidavit of S. Pratt, at ¶ 2 (citing Fairbanks Daily News Miner, "*Ruling Rekindles Debate Over Local Phone Market*," (Dec. 13, 2003).

[68] Triennial Review Order ¶ 510.

[69] *Id.*

[70] Prefiled Testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc., *In the Matter of GCI for Arbitration Under Section 252 of the Telecommunications Act of 1996*, U-96-89, at 9 (Sept. 29, 2003).

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Shelanski, it is extremely difficult to understand how a competitive local carrier that has been able to eliminate the incumbent's dominance while relying primarily on its own switches could be said to suffer impairment from lack of access to unbundled local switching.[71] If the RCA finds that ACS is no longer required to provide unbundled switching, as a formidable competitor, GCI has a strong bargaining position with regard to ACS in negotiating switching rates in areas where GCI cannot access lines using its own switching facilities.

2. The RCA Should Find No Impairment Because GCI Does Not Face Significant Operational Barriers.

The FCC also describes the operational barriers that the RCA should examine as part of its impairment analysis.[72] The Triennial Review Order, directs state commissions to look at whether the ILEC is providing nondiscriminatory access to unbundled loops.[73] Significantly, GCI serves only approximately 5% of its customer lines through the UNE platform[74] and has chosen to do so despite access to unbundling. Given the small number that GCI serves through UNEs and the above demonstrated self-provisioning by GCI, loop provisioning by ACS cannot create a significant operational barrier.

The FCC also directs the RCA to consider evidence of costs and physical constraints associated with collocation in the particular market and whether there is sufficient collocation space in ACS's office.[75] GCI is collocated in 100% of ACS' main switching centers in Anchorage, Fairbanks and Juneau. Further, GCI has demonstrated that it has been able to expand its facilities when it has made a business decision to do so. For example, in some

[71] Declaration of H. Shelanski, at 14.

[72] Triennial Review Order ¶ 511.

[73] *Id.* at ¶ 512.

[74] Declaration of H. Shelanski, at 9 (citing General Communication, Inc. SEC Form 10-Q at 37 (Sept. 30, 2003).

[75] Triennial Review Order ¶ 477.

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instances, GCI has used resale and UNE-P as interim means of serving customers while it has acquired additional switches and constructed additional collocations facilities, to which GCI then cut-over its resale customers.[76]

GCI has existing switches for which it can take the market-share lead in its key markets and has demonstrated its ability to expand the reach of its switching facilities.[77] As Dr. Shelanski explains, "[b]y any measure, the ability of a competitor to enter a market and in a few years to take nearly 45% or even a 20% share is impressive, and strongly rebuts any inference of economically meaningful competitive 'impairment.'"[78] Evaluating these potential barriers in the relative markets, GCI does not face significant operational barriers to entry for mass-market switching.

3. The RCA Should Find No Impairment Because Entry Is Not Uneconomic Without Unbundled Access To Local Circuit Switching.

The Order also directs states to consider all relevant factors in determining whether entry would be uneconomic in the absence of unbundled access to local circuit switching.[79] Whether entry will be economic depends critically on values of certain factors affecting a competing carrier's likely costs and revenues, these factors vary significantly among locations and types of customers.[80] The FCC lists the economic barriers that the RCA should examine, including

[76] Declaration of Frederick W. Hitz, III, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, at ¶ 4.

[77] Declaration of H. Shelanski, at 13.

[78] *Id.* at 14.

[79] Triennial Review Order ¶ 458.

[80] Triennial Review Order ¶ 484; *see also id.* at ¶ 481 (For example, backhaul circuit factors--where smaller wire center and competitors customer base small, unable to take advantage of scale economies, the cost disadvantage due to backhaul is much larger).

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"whether new technologies provide a superior means of serving customer."[81]

GCI is the owner of the monopoly cable network in Alaska.[82] GCI repeatedly has announced its intention to use that cable network to serve its local telephone customers. For example, GCI's Senior Vice President stated that GCI's cable telephone technology is working well and that "the preponderance of our residential service will be on cable."[83] Similarly, GCI said in recent SEC filings that it was funding testing of new technologies to achieve this transition out of its current local service revenues.[84] Therefore, GCI has a new technology alternative to unbundled switching that it has taken concrete steps to implement.[85]

The evidence of GCI's actual entry into the market, its substantial market share, the fact the GCI is collocated in 100% of ACS' main switching centers in Anchorage, Fairbanks and Juneau, and GCI's extensive cable telephony platform, overwhelming demonstrates that GCI is not impaired without access to the mass-market switching UNE in competitive markets.

C. Establishment Of A Batch Cut Process Is Unnecessary and Irrelevant in ACS' Markets.

The FCC concludes that switching impairment in the mass market category may be impacted by difficulties with the hot cut process.[86] The hot cut process is the process by which

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[81] *Id.* at ¶ 517.

[82] GCI's cable network reaches over 95% of households in all of Alaska. Prefiled Testimony of Dana Tindall, Sr. Vice President, Legal, Regulatory & Gov't Affairs, General Communication, Inc., Before the Senate Committee on Commerce, Science and Transportation, Communications Subcommittee at 3 (April 2, 2003).

[83] Declaration of H. Shelanski, at 13 (quoting Richard Dowling, quoted in the Anchorage Daily News, March 3, 2003 at E-5).

[84] Declaration of H. Shelanski, at 13.

[85] Triennial Review Order ¶ 517. "Although GCI's cable network may not reach certain areas in which businesses are concentrated, those are precisely the areas in which it is most economic for GCI to deploy its own switching and fiber, as it in fact has done." Declaration of H. Shelanski, at 13.

[86] Declaration of H. Shelanski, at 16.

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loops are transferred from one carrier to another. "The physical transfer of customer lines from the [ILEC] switch to the [CLEC] switch currently requires a coordinated loop cut over or 'hot cut' for each customer's line."[87] The FCC defines a "batch cut migration process" as a "seamless, low-cost process for transferring large volumes of mass market customers."[88]

In the Triennial Review Order, the FCC did not require the creation of a batch cut migration process. Rather, it requires the state only to consider whether absence of a batch cut migration process is causing impairment in the market for mass-market switching.[89] Only if the state determines that current hot cut processes cause impairment with respect to mass-market switching must the state implement a batch cut migration process.[90] ACS urges the RCA to find that such a process is unnecessary in any of its markets.

The Triennial Review Order provides useful guidance as to the situations in which a batch cut process in not required. "For example, in a small, rural wire center, where there is not a significant volume of customer migrations, the absence of a batch cut process may not cause impairment."[91] According to the FCC:

> In such cases, the state commission may decline to institute a batch cut process, so long as it instead issues detailed findings regarding [i] the volume of UNE-L migrations that could be expected if [CLECs] were no longer entitled to unbundled local circuit switching, [ii] the ability of the incumbent to meet that demand in a timely and efficient manner using the existing hot cut process, and [iii] the non-recurring costs associated with the hot cut process.[92]

The FCC referred the batch cut migration process to the states in response to

[87] Triennial Review Order ¶ 465.

[88] *Id.* at ¶ 423. Where there is difficulty in accumulating enough customers to justify batch line migration process, the state may order the LEC to provide rolling access. *Id.* at ¶ 522.

[89] *Id.* at ¶ 460.

[90] *Id.* at ¶ 423.

[91] *Id.* at ¶ 490.

[92] *Id.*

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commenters' advocacy.[93] The contention was that if the mass market switching UNE were eliminated, companies that predominantly provided service via UNE-P would be required to deploy their own switches and convert existing customers from UNE-P to UNE-L (loops only).[94] The Order suggests that these conversions would place an extreme burden on the ILECs to cut over large volumes of customers to loop service. To address CLEC's concerns regarding the inadequacy of current procedures to accommodate large volumes of cut overs, the FCC determined that state commissions should review the issue and establish viable "batch cut" processes, *if necessary*, to respond to situations where large volumes of conversions were anticipated. "The important evidence for the impairment inquiry is the CLEC's successful switch deployment, not the incidents of hot-cut problems."[95]

In ACS' service areas, batch cut processes are unnecessary and, in the Anchorage service area, totally irrelevant. In Anchorage, GCI already serves nearly all its customers using its own switch. Circuit switching is available to GCI as a UNE, but GCI has never ordered this UNE and therefore has no UNE-P customers in Anchorage whatsoever to cut over to UNE loops. GCI claims, that it has had difficulties with hot cuts.[96] Even so, as detailed above, GCI installed its own switches and used them as the principal means of serving its residential and business customers. Thus, as stated by Dr. Shelanski, GCI may "have found hot cut problems to pose a challenge, a nuisance, or a cost, but any such problems were not sufficiently great as to make it uneconomic for GCI to install its own switches and to rely on them as the principal means of

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[93] *Id.* at ¶ 473-74.

[94] *Id.* at ¶ 468.

[95] Declaration of H. Shelanski, at 16.

[96] Triennial Review Order ¶ 465 n.1409. *See* also Declaration of H. Shelanski, at 16. "It is important to recognize, however, that the FCC did not equate hot-cut problems with impairment. Rather, the FCC viewed hot cut problems as one of the explanations for the low level of mass-market switching that CLECs were provisioning for themselves."

serving its residential and business customers."[97] Given that GCI is already serving a large percentage of its customers with its own switches, GCI cannot be impaired without a batch cut process.

Although GCI does purchase some unbundled local circuit switching in Juneau and Fairbanks, the total volume of customer migrations in these service areas is not significant.[98] As true for Anchorage, GCI has its own switching capability and is collocated in each of ACS' main switching centers in Juneau and Fairbanks. A review of GCI's order processing history indicates that GCI has submitted virtually no requests for migration from UNE-P to UNE-L.[99] It is unlikely that GCI would request a large-scale transfer of its remaining UNE-P customers to UNE-L service, and even if they do, the absolute numbers of customers to be transferred are not of the magnitude the FCC considered when it discussed hot cut batch processes. Given the relatively low transaction volumes in these small, rural wire centers, the absence of a batch cut process does not cause impairment.[100]

Significantly, even if GCI previously had difficulties with hot cuts, ACS now has a procedure in place for hot cuts that meets the actual demand for cut overs that the company is

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[97] Declaration of H. Shelanski, at 16-17.

[98] GCI serves approximately six percent of its Fairbanks customers and ten percent of its Juneau customers using ACS' switching facilities. Affidavit of S. Pratt, at ¶ 4. These are not the "large volumes" of mass market customers the FCC had in mind when it addressed the potential need for "batch-cut" processes. As noted above, GCI has not made it a practice to migrate from UNE-P to UNE-L. Therefore, even if the RCA were to consider GCI's use of UNE-P to be numerically material, mass migration off UNE-P is unlikely. Therefore, a "batch cut" process is unnecessary.

[99] As part of its market entry strategy, GCI initially served customers on a Total Service Resale ("TSR") basis and then migrated those customers to UNE-L after deploying its own switch. In Fairbanks, for example, GCI converted a total of 1,372 TSR customers to loop service between August 2002 through October 2003 (approximately 114 orders per month; approximately five orders per day). Affidavit of S. Pratt, at ¶ 11. It is important to note that these conversions have already occurred and were provisioned without the need for a "batch cut" process.

[100] Order ¶ 490.

receiving from CLECs.[101] ACS is now capable of processing 314 orders per-day for all markets.[102] This number is in excess of the maximum number of customers ACS has recently been asked to cut over in a single day.[103] In fact, if one were to take the peak days cut-over days since June 2002 for Anchorage (211 cuts), Fairbanks (44), and Juneau (38) and assume they all occurred on the same day, the total of 294 is below the number that ACS is now set up to process in a day.[104] In a sample period from October 1, 2003 to December 15, 2003, the average number of daily cut orders requiring central office work was, respectively, 88 in anchorage, 15 in Fairbanks, and 6 in Juneau.[105] ACS is well equipped to process such batches, and as GCI's significant market share attests, the hot cut process in Alaska is not the source of any competitive impairment.[106] Indeed, as pointed out by Dr. Shelanski, the cut-over volumes at issue in Alaska are significantly less than volumes the FCC found to cause competitive problems.[107]

Further, non-recurring costs charged by ACS to GCI for cut-overs do not pose a significant barrier to entry. In the three Alaskan markets, the non-recurring costs of a batch cut process are modest. In Anchorage, ACS proposes to charge GCI $19.64 per line to perform a loop migration.[108] This amount includes charges that GCI would incur even if it used its own switch.[109] The non-recurring costs that the FCC was concerned about as posing a significant

[101] Declaration of H. Shelanski, at 17.

[102] Affidavit of S. Pratt, at ¶ 8.

[103] *Id.*

[104] *Id.*

[105] *Id.* at ¶ 10.

[106] Declaration of H. Shelanski, at 17.

[107] *Id.* (citing Triennial Review Order ¶ 468, n.1425).

[108] Affidavit of S. Pratt, at ¶ 12 .

[109] *Id.*

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barrier to entry ranged from $51 to $185, which are substantially greater than ACS' charge.[110] The rates proposed by ACS are not the "prohibitively expensive" charges about which the FCC was concerned.[111]

The RCA should not assume that it must implement a batch cut migration process, even prior to conducting the inquiry required by the FCC regarding whether such a process is necessary. ACS urges the RCA to preserve the FCC's intended purpose of the batch hot cut analysis, which is to mitigate any switching impairment that may arise from large volumes of transfers of a competitor's mass market customers from the switching UNE to the competitor's own switches. As detailed above, there is "actual deployment of CLEC switches, competitive success of the leading CLEC unparalleled elsewhere in the country, and there is a real alternative to the ILEC facilities should the CLEC eventually decide not to continue its successful UNE-L entry strategy." [112] These facts specific to the Alaskan markets demonstrate that CLECs are not impaired without a batch cut process.

V. GCI IS NOT IMPAIRED WITHOUT ACCESS TO UNBUNDLED DEDICATED INTEROFFICE DS-3 AND DARK FIBER TRANSPORT.

The FCC limited its definition of the dedicated transport network element to those transmission facilities *connecting ILEC switches or wire centers*.[113] This limitation represents a narrowing of the previous definition to reflect the distinction between the economics of dedicated facilities used for backhaul between networks, and transport within an ILEC's network. This definition includes only those transmission facilities *within* an ILECs transport

[110] Triennial Review Order ¶ 470.

[111] *Id.*

[112] Declaration of H. Shelanski, at 18.

[113] Triennial Review Order ¶ 359.

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network, that is, the transmission facilities between ILEC switches.[114]

The FCC conducted its impairment analysis of dedicated transport on a capacity basis. Thereby making different findings of impairment or non-impairment based upon the following capacity levels: OC-n, DS-3, DS-1 and dark fiber transport.[115]

The FCC finds on a national basis that competitive carriers are impaired without access to unbundled inter-office transport facilities at the DS-1 level, DS-3 level and for dark fiber. Competitive carriers are not impaired without access to unbundled OCn transport facilities.[116] The Triennial Review order creates a two-trigger review by which an ILEC can show in a route-specific state review proceeding that a requesting carrier is not impaired without unbundled DS-1, DS-3[117] or dark fiber transport. A state must find non-impairment as to any particular point-to-point route if the state finds either the *transport self-provisioning trigger* or the *transport third party alternative* trigger have been met.[118]

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[114] Dedicated interoffice transmission facilities (transport) are facilities dedicated to a particular customer or competitive carrier that it uses for transmission among [ILEC] central offices and tandem offices. Competing carriers generally use interoffice transport as a means to aggregate end-user traffic to achieve economies of scale. They do so by using dedicated transport to carry traffic from their und users' loops, often terminating at incumbent LEC central offices, through other central offices to a point of aggregation. Triennial Review Order at ¶ 361; *see also id.* at ¶ 365, 366 (ILECs must only unbundle in a network transport connecting the ILEC's switches or wire centers.).

[115] Triennial Review Order ¶ 380.

[116] *Id.* at ¶¶ 381, 386, 390.

[117] The FCC determination for DS-3 level transport was "based on the high fixed and sunk costs associated with self-provisioning transport and the lack of route-specific evidence showing alternative facilities as well as the difficulty of overcoming these obstacles at the transmission level." Triennial Review Order ¶ 386. Further, the FCC placed a special limit at the DS-3 level limiting a requesting carrier from obtaining more than 12 unbundled DS-3 circuits along a single route. *Id.* at ¶ 388.

[118] *See id.* at ¶ 394 ("The Supreme Court required that the Commission apply '*some* limiting standard to its impairment analysis. In this regard, the Court advised that '[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network,' including whether requesting carriers are able to 'self-provision, or purchas[e] from another provider.' We also recognize that the D.C. Circuit questioned how the Commission could find that an element like transport 'is significantly deployed on a competitive basis,' but remains available as an unbundled element from the [ILEC]. As discussed above, we make affirmative national findings of impairment

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The *transport self-provisioning trigger* requires the state to find that it is economical for the requesting carrier to self-provision transport facilities, as evidenced by *three carriers, in addition to the ILEC*, each having made sunk investments in transport facilities on the route.[119] Because the FCC concluded that competitors generally cannot self-provision capacity at the DS-1 level, it held that the transport self-provisioning trigger should not apply at the DS-1 level.[120]

The *transport third party alternative* trigger requires the state to find that carriers have the ability to use *two or more carriers, in addition to the ILEC*, as wholesale alternatives to the ILEC's network on the route.[121]

ACS believes that the impairment triggers may be met for specific routes, but more information is needed to analyze the transport markets in Alaska. The available evidence, however, strongly suggests that transport facilities are not a source of competitive impairment in Alaska. GCI provides approximately 25% of its service using its own switching, transport and loops; and provides two-thirds of its service using its own switching and transport, with ACS' loops.[122] GCI already self-provisions most of its local transport through its own fiber plant. In each of its LEC service areas, GCI uses its own fiber to connect its switch with the ACS offices in which GCI's remotes are collocated. Similar fiber resources apparently connect GCI's offices

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and non-impairment for transport at the national level, as supported by the record. However, evidence suggests that requesting carriers likely are not impaired without access to unbundled transport in some particular instances, but evidence in the record is not sufficiently detailed to identify these specific routes. Therefore, as described in detail below, we delegate to states a fact-finding role to identify where competing carriers are not impaired without unbundled transport, pursuant to two triggers.")

[119] *Id.* at ¶ 399-400.

[120] *Id.* at ¶ 409.

[121] *Id.*

[122] Comments of GCI before the FCC (CC Docket Nos. 01-338, 96-98, 98-147), Declaration of Frederick W. Hitz III, at 2. GCI has never purchased transport from ACS in Anchorage, the market in which GCI has already taken nearly 45% market share. And in Juneau and Fairbanks the only transport GCI has purchased from ACS is incident to the small number of customers GCI serves over UNE-P. Affidavit of S. Pratt, at ¶ 14.

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in Juneau and Fairbanks with ACS offices in those respective cities.[123] Additionally, there is third-party provider, Alaska Fiber Star (AFS), of fiber transport in Alaska.[124]

Further, ACS believes that GCI has significant fiber in place throughout Alaska for its cable television backbone.[125] For example, the transport between each of the ACS collocated offices and the GCI switch location on Arctic Boulevard is provided by GCI. In Fairbanks, GCI has extensive fiber within the ACS Fairbanks LEC serving area which includes fiber to ACS offices. In Juneau, GCI has extensive fiber associated with its cable television operations. In addition, GCI has submarine cable landing at Whittier, Alaska that, with a spur to Juneau, extends to Anchorage, Valdez, and along the pipeline route to Fairbanks.[126]

The above facts weigh heavily against any finding of competitive impairment due to transport. GCI has had actual experience in successfully providing its own transport. As stated previously, the FCC says this factor should receive substantial weight in the impairment analysis[127] and thus, greatly weakens the case for impairment. Additionally, "GCI's extensive cable network provides GCI with an alternative set of transport facilities which eliminate any possibility of impairment, especially as GCI pursues its strategy of cable telephony."[128]

While ACS believes the evidence weighs heavily in favor of a non-impairment finding, more information is needed analyze the transport market in Anchorage, Fairbanks and Juneau. Specifically more information is needed on competitive fiber assets and data on the costs of fiber build-out in these local telephone markets. ACS intends to seek discovery on these matters as

[123] Affidavit of S. Pratt, at ¶ 15. GCI has a fiber ring in Anchorage that GCI already connected to 22 office buildings, but GCI has not made available to ACS either the location of those 22 office buildings or any further details of its fiber resources. *Id.* at 14.

[124] *Id.* at ¶ 15.

[125] Affidavit of S. Pratt, at ¶ 14.

[126] *Id.*

[127] Triennial Review Order ¶ 461.

[128] Declaration of H. Shelanski, at 20.

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provided in Order R-03-7(1).[129] Absent additional evidence, the RCA should conclude from the available evidence that transport creates no competitive impairment in Anchorage, Fairbanks and Juneau.

VI. THE SHARED TRANSPORT NETWORK ELEMENT SHOULD BE ELIMINATED FROM THE LIST OF ACS' REQUIRED UNES BECAUSE ACS MEETS THE NON-IMPAIRMENT TEST FOR MASS MARKET SWITCHING.

The FCC finds that requesting carriers are impaired without access to unbundled shared transport only to the extent that the Commission finds that the carriers are impaired without access to unbundled switching. Thus, carriers must unbundle shared transport only to the extent that they continue to be required to unbundle local circuit switching.[130]

As already indicated, ACS meets the test for non-impairment for mass market switching, in all three of the geographic markets discussed, based on the potential deployment analysis. Therefore, the shared transport network element should be eliminated from the list of ACS' required UNEs as well.

VII. GCI IS NOT IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY LOOPS AND DARK FIBER LOOPS.

"Loops in their simplest form are the transmission facilities between a central office and the customer's premises, *i.e.*, 'the last mile' of a carrier's network that enables the end-user customer to receive, for example, a telephone call or a facsimile, as well as to originate similar communications."[131] For purposes of the loop unbundling requirements, the FCC distinguishes between the use of UNEs to serve the *mass market* (residential and small business users of

[129] *Order Opening Docket and Setting Procedural Schedule*, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1), at 10-11 (Nov. 28, 2003).

[130] Triennial Review Order ¶ 534.

[131] *Id.* at ¶ 203.

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analog loops, DS-0 loops, or DSL-capable loops) and to serve *enterprise users* (medium and large businesses using sophisticated telecommunications services, such as loops of DS-1 or greater capacity).[132] The FCC based its determinations on loop type and capacity.[133] Also, the FCC recognizes that operational and economic concerns vary depending on the geographic market served.[134]

While the FCC made a national non-impairment finding as to lit, Ocn loops,[135] ILECs must continue to provide access to unbundled DS-1 loops, DS-3 loops (up to two loops per customer) and dark fiber loops unless the state finds that a competitor will not suffer impairment from the lack of such access.[136]

ACS does not challenge the FCC finding for DS-1 loops in any of the relevant Alaskan markets. ACS, however, asks for relief from providing access to unbundled DS-3 loops and dark fiber loops because no competitor will suffer impairment under the FCC's analysis. A state's finding of "no impairment" must be based on FCC-defined triggers measuring the possibility of alternatives to the ILEC's loops at the customer location in question.[137] The relevant triggers are defined as follows:

Competitive wholesale facilities trigger[138] – Two or more competing providers not affiliated with each other or the ILEC that (i) have deployed its own facilities and offers a loop

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[132] *Id.* at ¶ 201-02.

[133] *Id.* at ¶ 201 ("With respect to our enterprise market analysis, we make national impairment determinations based on loop characteristics that do not vary significantly from area to area. Our conclusions with respect to loop deployment do vary, however, according to the loop type . . . and the capacity level of the particular loop.").

[134] *Id.* at ¶ 307.

[135] *Id.* at ¶¶ 315-19.

[136] *Id.* at ¶ 202.

[137] *Id.* at ¶ 202.

[138] *Id.* at ¶¶ 337-38.

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over those facilities on a "widely-available wholesale basis" to other carriers desiring to serve customers at that location; and (ii) have access to the entire customer location, including each individual unit within that location. Intermodal providers of services comparable in quality to the ILEC's may also be counted.

Self-provisioning trigger[139] – Two or more competing providers not affiliated with each other or the ILEC serving customers at a location using (i) its own loop facilities it has deployed at that location; or (ii) dark fiber it has acquired under a long-term IRU and to which it has attached its own optronics.

To determine that an ILEC no longer must provide DS-3 UNE loops to a particular location, the RCA must find no impairment where the *competitive wholesale facilities trigger* or the *self-provisioning trigger* has been satisfied.[140] To determine that an ILEC no longer must provide Dark Fiber loops to a particular location, the state must find that the location meets the *self-provisioning trigger*.[141] These findings must be made on a location by location basis.[142]

In its impairment analysis for loops, the FCC gave "substantial weight to the cost of constructing a loop facility in relation to the ability of the competitive carrier to recover those costs over time, *i.e.*, where the traffic volume and associated revenue potential from the loop

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[139] *Id.* at ¶¶ 332-34.

[140] *Id.* at ¶ 321.

[141] *Id.* at ¶¶ 314, 334, 335. States commissions have "Analytical Flexibility" when applying the Self-Provisioning Trigger for dark fiber loops. "[W]hen conducting its customer location specific analyses, a state must consider and may also find no impairment at a particular customer location even when this trigger has not been facially met *if* the state commission finds that no material economic or operational barriers at a customer location preclude competitive LECS from economically deploying loop transmission facilities . . . . In making a determination that competitive LECs *could* economically deploy loop transmission facilities" that state commission must consider various factors. *Id.* at ¶ 335.

[142] *Id.* at ¶ 298.

facility allow a carrier to earn a return necessary to sustain its operations at that location."[143]

ACS believes that the potential deployment analysis may be satisfied on a number of routes, however more information is needed to complete the analysis. The available evidence, however, suggests there is no impairment for high capacity and dark fiber loops. For example, GCI states that it currently owns the loop facilities that serve 25% of its retail lines.[144] Further, GCI is an interexchange carrier to certain communities that are not served by ACS. Within the LEC service areas of ACS, GCI has the exclusive cable to two subdivisions. ACS is unable to provide facilities-based service to customers in these subdivisions[145] and is required to lease service from GCI to do so. Even if the unbundling obligation is lifted, ACS has an incentive to continue offering unbundled loops to GCI, because ACS wants access to customers that are served exclusively by GCI's facilities. In addition, GCI's fiber rings would appear to place the company in a good position to construct high capacity loops to business customers in proximity to the ring.[146]

While ACS believes the evidence weighs in favor of a non-impairment finding, more information is needed analyze the high capacity and dark fiber loops market in Anchorage, Fairbanks and Juneau. ACS intends to seek discovery on these matters as provided in Order R-03-7(1).[147] Absent additional evidence, the RCA should conclude from the available evidence that there is no impairment in locations where GCI or other competitive carriers have loop

[143] Triennial Review Order ¶ 306. (It also considered CLEC "access to public and private rights-of-way and multiunit premises access, that [ILECs] have not or do not similarly face as a result of their first-mover advantage").

[144] Declaration of Frederick W. Hitz, III at 5, Review of the Section 251 Unbundling Obligatins of Incumbent Local Exchange Carriers, CC Docket 01-338 (filed with FCC April 5, 2002).

[145] Affidavit of S. Pratt, at ¶ 17.

[146] Declaration of H. Shelanski, at 20.

[147] *Order Opening Docket and Setting Procedural Schedule*, In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies, R-03-7(1), at 10-11 (Nov. 28, 2003);

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facilities.

VIII. CONCLUSION

ACS submits that the RCA should provide unbundling relief to ACS in all relevant geographic markets for mass market switching and dedicated transport. The RCA should find that the establishment of a batch cut loop migration process in unnecessary in ACS' service areas. The available evidence for the loops and certain transport elements weigh heavily in favor of a non-impairment finding, but ACS does not have sufficient information regarding CLEC facilities to make all of the necessary showings as part of these comments. ACS requests that the Commission conduct discovery for specific information needed for the impairment analysis for loops and dedicated transport.

Respectfully submitted this 12th day of January, 2004.

By_____

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:	Mark Johnson, Chair Kate Giard Dave Harbour James S. Strandberg G. Nanette Thompson
In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	R-03-07

AFFIDAVIT OF STEPHEN A. PRATT

Stephen Pratt, being first duly sworn, deposes and states as follows:

1. My name is Stephen Pratt, and I am under contract as a consultant to Alaska Communications Systems. Through June 2002, I was employed by ACS as Senior Manager, Carrier Relations and Interconnection Services. In that capacity, I was involved in and aware of ACS/GCI local interconnection developments and issues. In this proceeding, ACS requested that I review quantitative information relative to GCI's ability to use its own switching and transport facilities to provide local exchange services in Anchorage, Fairbanks, and Juneau.

Market Share

2. GCI entered the Anchorage market in 1997. In Anchorage, I estimate there are 191,000 working access lines. By ACS' estimates, GCI currently serves approximately 45% of the local exchange market in Anchorage, and ACS serves 49% of the market. GCI has made similar gains in Fairbanks and Juneau since entering those markets in 2001 and 2002,

respectively. According to GCI, it serves approximately 22% of the Fairbanks market and 30% of the Juneau market.[1]

Switching

3. In Anchorage, unbundled switching has been available to GCI under an interconnection agreement since 1997. While other local communications carriers, like AT&T and TelAlaska, have relied on the resale of ACS services, GCI has chosen to utilize its own switching facilities.

4. GCI has installed Lucent 5E switches in Anchorage, Fairbanks and Juneau. In each of these areas, GCI is collocated in all of ACS's major wire centers[2] and in many locations where ACS has placed remote switches. Due to the extensive nature of GCI's switching facilities, GCI has never ordered the switching UNE from ACS in Anchorage, and only uses ACS switching in Fairbanks and Juneau for a small number of customers. ACS estimates that GCI serves approximately 6% of customers in Fairbanks and 10% in Juneau using ACS' switching facilities. Even though GCI has not used ACS UNE switching in Anchorage, it serves approximately 45% of the wireline market, primarily using its own switching and transport capabilities.

5. GCI reported in SEC filings that at the end of 2002, its own local switches were capable of reaching 92% of all local loops in Anchorage, 71% in Fairbanks and 48% in Juneau. (*See* GCI SEC Form 10-K at 32 (Dec. 31, 2002)). At the end of 2003, these numbers had increased. Using publicly available information and ACS confidential and proprietary

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[1] *See* Fairbanks Daily News Miner, "*Ruling Rekindles Debate Over Local Phone Market*," (Dec. 13, 2003).

[2] ACS major wire centers include North, South, East, West, and Central in Anchorage, Globe in Fairbanks, and Main in Juneau.

data, I have estimated that, as of November 2003, GCI has increased its own switching facilities in Fairbanks to reach 77% of the access lines, and in Juneau, to reach 57% of the access lines.

6. I am unaware of any characteristics or limitations of ACS' network that would pose operational barriers to GCI's addition of remote switching capability to extend the reach of its existing switches to new customers in ACS' service areas. With regard to its own customers, the public and proprietary information I have reviewed indicates that in Fairbanks, GCI serves approximately 72% of its customers through its own switch, and in Juneau, GCI serves approximately 45% of its customers through its own switch.

7. As of December 2003, and again based on both publicly available and ACS confidential information, I estimate that GCI was serving approximately 90,400, or 34%, of the total 263,008 combined lines in Anchorage, Fairbanks, and Juneau, Alaska's three largest cities using its own switches. It appears that GCI, using its own switching facilities, serves 42% of the lines in Anchorage, 17% of the lines in Fairbanks, and 10% of the lines in Juneau[3].

Batch Hot Cut Process

8. Currently, the ACS service center is capable of processing approximately 314 orders per-day for all markets. This number includes all order types, including moves, facility changes, conversions and billing changes. Since June 2002, the maximum number of

[3] GCI may be serving closer to 20% of the lines in Juneau. This estimate is based on a GCI market share in Juneau of about 20%. According to GCI, its market share in Juneau is 30% (Fairbanks Daily News Miner, December 13, 2003). The discrepancy may be due to a lack of knowledge on ACS's part about the reach of GCI facilities.

customers that ACS has been asked to cut over to GCI's switch in a single day has been 211 in Anchorage, 44 in Fairbanks and 38 in Juneau. This maximum number of daily cut-overs is well within ACS' capacity.

9. ACS currently uses what we believe the FCC means when it refers to a batch cut process. Orders are processed by Customer Service Representatives (CSRs). Those orders that require Central Office work, i.e. orders that require jumper work on the ACS frame or the GCI frame, are printed out by Central office technicians in the form of a batch of "Rack Sheets." The orders for all carriers, including ACS, GCI, AT&T, and others, are processed in a single batch. The Rack Sheets contain information necessary to complete the order, and are printed out in the Central Office the afternoon before the order is due. Technicians in the Central Office pre-run jumpers on the frame for all orders in the batch that are due the next day. The next morning, the technicians complete jumper connections and disconnect the jumper from the "old" switch. Inefficiencies with the system are caused by various orders that disrupt the flow of work and require special handing (expedites, bad GCI cable pair assignments, etc.). ACS has committed to processing all orders within a 4 day time frame.

10. During a sample period from October 1, 2003, to December 15, 2003, the average daily number of orders requiring central office work, including orders to cut over lines to GCI's switch, was 88 in Anchorage, 15 in Fairbanks, and 6 in Juneau. The maximum daily number of cut-overs requested by GCI during October and November of 2003 was 54 in Anchorage, 31 in Fairbanks, and 7 in Juneau. Current staffing at ACS wire centers allows for the scheduling of approximately 90 central office work orders per wire center per day, or approximately 500 total central office work orders in Anchorage, 90 in Fairbanks, and 90 in Juneau.

11. In Fairbanks, GCI converted a total of 1,372 Total Service Resale customers to loop services between August 2002, and August, 2003. This breaks down to approximately 114 orders per month, which is approximately five orders per day. Therefore, ACS's existing provisioning processes have been sufficient to accommodate market place demands.

12. In Anchorage, ACS has proposed to charge GCI $5.85 to perform a loop migration from the ACS network to the GCI network. This charge is in addition to the $13.79 service order processing fee which exists regardless of whether the ACS or GCI switch is used to serve GCI's retail customer. The proposed $19.64 total for loop migration is less than the $22.25 per loop cost that GCI currently pays in the Anchorage market to move lines to its own switching facilities.

13. With regard to service order processing costs, ACS has also proposed to give GCI the option of electronic service order processing. ACS has proposed an electronic service order processing charge of $3.62, which includes service order and porting charges. Should GCI utilize electronic order submission for loop migration, the total charge to GCI would drop from $19.64 to $9.47. In my opinion, these nominal non-recurring costs for loop migration charges and service order processing would not impair GCI's ability to participate in the market.

Transport

14. Based on my dealings with ACS and GCI, I understand that GCI has substantial fiber resources throughout Alaska for its telecommunications and cable television operations. In the Anchorage local exchange service area, GCI provides its own transport using its extensive fiber network, including transport between its host and remote switches collocated with ACS facilities. GCI has indicated that as of November, 2002, it had already connected

fiber to 22 office buildings. (*See Ex Parte* Letter to William Maher, Chief, Wireline Competition Bureau, from Frederick W. Hitz, III, Director, GCI, CC Dockets 01-338, 96-98, 98-147 (filed Nov. 21, 2002).). Since GCI provides all of its own transport between ACS wire centers, GCI has not ordered the transport UNE in the Anchorage market. In Fairbanks and Juneau, GCI purchases the transport UNE for the small number of customers it serves through UNE-P. Additionally, GCI has submarine fiber between the cable landing points at Norma Beach, Washington, and Whittier, Alaska, which connect to fiber that extends to Anchorage, Valdez, and along the pipeline route between Valdez and Fairbanks. The submarine fiber also extends a spur to Juneau.

15. In addition to GCI's transport facilities, Alaska Fiber Star (AFS) has fiber in ACS's Anchorage and Fairbanks local exchange service areas, as well as fiber facilities that connect Anchorage, Fairbanks, and Valdez to each other and to an AFS submarine fiber that connects these locations to a cable landing point at Pacific City, Oregon.

16. Other than these general descriptions, ACS has no way of knowing where the transport routes of GCI or other telecommunications service providers are located.

Loops

17. According to documents filed by GCI, it provides service to approximately 25% of its retail lines wholly over its own facilities. (*See* Declaration of Frederick W. Hitz, III at 5, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (filed with FCC April 5, 2002)). In Anchorage, there are two subdivisions on Elmendorf Air Force Base in which only GCI has loop facilities. ACS is unable to provide facilities-based service to customers in these subdivisions.

Further Affiant Sayeth Not.

Stephen A. Pratt

Subscribed and sworn to before me on this 12th day of January, 2004.

Notary Public
My Commission expires:

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:	Mark Johnson, Chair Kate Giard Dave Harbour James S. Strandberg G. Nanette Thompson
In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	R-03-07

Affidavit of Howard A. Shelanski

Qualifications

1. I am Professor of Law and Co-Director of the Berkeley Center for Law and Technology at the University of California at Berkeley. I received my B.A. from Haverford College in 1986, my J.D. from the University of California at Berkeley in 1992, and my Ph.D. in economics from the University of California at Berkeley in 1993. I have been a member of the Berkeley faculty since 1997. In 1998-2000 I was on leave from my faculty position to serve as a Senior Economist to the President's Council of Economic Advisers (1998-99) and then as Chief Economist of the Federal Communications Commission (1999-2000). I rejoined the Berkeley faculty on a full time basis in July 2000. I formerly practiced law in Washington, D.C. and served as a law clerk to Justice Antonin Scalia of the U.S. Supreme Court.

2. I teach and conduct research in the areas of telecommunications regulation, antitrust, and applied microeconomics. My recent publications include articles in the *Yale Journal on Regulation*, the *University of Chicago Law Review*, the *University of Chicago Legal Forum,* and *Telecommunications Policy*. I am co-author of the legal textbook

Telecommunications Law and Policy (Carolina Academic Press, 2001). My C.V. is provided as Attachment A.

Summary

3. The primary purpose of this declaration is to explain why the RCA should forebear from requiring ACS to continue the provisioning of unbundled network elements ("UNEs") in Anchorage, Fairbanks and Juneau. I first address the unbundled switching market, and I conclude that all the relevant evidence supports a finding of no impairment as to switching in all three of these geographic markets. I then explain why the available evidence points toward the same conclusion for dedicated transport and high-capacity and dark fiber loops, and I discuss what additional information would be useful to the Commission in analyzing whether there would be any impairment in eliminating those UNEs as well.

4. From an economic perspective, three facts relevant to unbundled switching stand out brightly in ACS's largest local exchange markets, Anchorage, Fairbanks and Juneau. First, even with unbundled switching available to competitors in Alaska, the leading CLEC, GCI, has chosen to use its own switches to serve the great majority of its local exchange customers. This fact alone weighs heavily against the possibility that competitive entry in Alaska would be "impaired" in the absence of unbundled local switching.

5. Second, competitive entry into Alaska's local exchange markets has been enormously successful not just by the standards of local telecommunications, but by the standards of competitive entry in any industry. Since GCI entered the local services market in Anchorage in 1997, it has taken approximately 45% of that market, both in the mass market sector and in the enterprise sector, using exclusively its own switches. Affidavit of Steve Pratt

at ¶2. GCI has also gained substantial shares in more rural markets: GCI has captured about 30% of the market in Juneau since entering that market in 2002, and 22% of the market in Fairbanks since 2001, in each case using predominantly its own switching facilities. *Id.* GCI relies on ACS switching in those rural markets to serve only about 6% of its Fairbanks customers and 10% of its Juneau customers. The fact that a competitor using exclusively or primarily its own switches has been so unusually successful in several LEC service areas makes the case against impairment, and hence unbundled switching, an overwhelming one.

6. But even if any question of impairment remains, a third fact about local competition puts the case to rest: GCI owns a monopoly cable network that gives it a distinct alternative to either UNE-L or UNE-P (or resale) for providing local telephone service and, in addition, owns substantial fiber assets for serving major business customers. This puts GCI in a position where it does not have to rely at all on ACS' facilities and therefore, even if GCI were to speculate that some hypothetical factor might someday limit its highly successful UNE-L strategy, GCI would not need unbundled switching to compete. Indeed, GCI has already begun migration of its telephone customers to its cable network and has announced to its investors its plans to migrate virtually all of its residential telephone customers to its monopoly cable network over five years, beginning with a goal of 10,000 customers in 2004.[1] Not only do these resources help GCI, but they put GCI in a position to be an independent provider of wholesale facilities to other CLECs.

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[1] Testimony of Dana Tindall on Behalf of General Communication, Inc., Petition of GCI Communications Corp. for Arbitration Under Section 252 of the Communications Act of 1996 with the Municipality of Anchorage a/k/a ATU Telecommunications for the Purpose of Instituting Local Exchange Competition, U-96-89, Public Hearing, Volume X at 835 (Nov. 6, 2003).

7. Taken together, the above facts defeat any reasonable possibility of economically meaningful "impairment" due to local switching in Alaska. As the U.S. Supreme Court and D.C. Circuit Court of Appeals have made very clear, the legal standard for impairment under the 1996 Act is not weak or open-ended. Yet it would be only the weakest and most contrived definition of impairment that could survive the above facts – certainly not a definition that comes close to meeting the requirements established by the courts or by the FCC in its *Triennial Review* order. Moreover, the facts discussed above are precisely the kind of actual market evidence that the FCC says must receive greatest weight in an unbundling proceeding.[2] Evidence that a CLEC is in fact self-provisioning, that it is succeeding competitively with that strategy, and that it has access to alternative "intermodal" facilities are hard facts that the FCC has declared worthy of greater weight than models, speculative conjectures, or anecdotes about impairment. Alleged instances of problems with hot cuts, for example, cannot change the facts that GCI has chosen, despite such alleged problems, to use its own switches rather than UNE switching to serve local customers, that it has done so successfully and economically, and that its cable network affords it a strategic alternative for competitive service not even available to ACS itself. As an economic matter, no credible case for "impairment" can be made with respect to local switching in Alaska.

8. The available evidence also weighs against unbundling of local transport in Alaska. I understand that GCI has substantial fiber facilities in Anchorage, Fairbanks, and Juneau and that it supplies its own transport between its host and remote switches in those

[2] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 at ¶¶ 458, 510 (rel. Aug. 21, 2003) ("TRO").

markets. According to ACS, GCI does not purchase transport from ACS in Anchorage. In addition to the fiber GCI currently uses for local transport, it has additional assets potentially useful for transport. For example, GCI has an extensive long-distance network in Alaska and has constructed a fiber ring which already serves 22 office buildings. GCI, in addition, has fiber backbone for its cable network through which it can provide transport as it pursues its strategy of providing telephone service over its cable facilities.

9. I have not had access to more detailed information about GCI's facilities, nor the facilities of other carriers that have fiber networks in Anchorage, Fairbanks and Juneau, and hence cannot, without further information from those carriers, develop a complete picture of the local transport market in these three markets. Additional information from GCI would therefore be most helpful for the Commission to complete its analysis of competitive transport facilities and make a determination as to the rationale for continuing or discontinuing the unbundling obligation on any transport route in these areas. Nonetheless, the evidence that is available weighs heavily against any finding of impairment.[3] For similar reasons, additional discovery is appropriate as to high-capacity (DS-3) and dark fiber loops.

10. The remainder of this declaration will expand on the above arguments. Part 1 of the declaration will discuss the 1996 Act's "impairment" requirement. Part 2 will examine the market facts summarized above and apply the impairment inquiry to local switching in Alaska in light of the FCC's 2003 *Triennial Review* order. Part 3 will examine the transport and high-capacity loop elements in Anchorage, Fairbanks and Juneau, and part 4 will conclude.

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[3] Similar lack of information prevents my analysis at this point of enterprise loops and the market for high capacity loops.

I. Impairment and Unbundling under the 1996 Act

11. The Supreme Court has made clear that unbundling under the 1996 Act is subject to "*some* limiting standard, rationally related to the goals of the Act." *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366, 388 (1999). The Court held that there must be "some substance to the 'necessary' and 'impair' requirements" of the 1996 Act (*id.* at 392) and that it could not be left up to entrants to whether unbundling is necessary to prevent competitive impairment. *Id.* at 389. The United States Court of Appeals later built on the Supreme Court's ruling and held that the impairment standard for unbundling was a stringent one that requires proof of more than the normal costs and disadvantages of competitive entry: "To rely on cost disparities that are universal as between new entrants and incumbents in *any* industry is to invoke a concept too broad, even in support of an *initial* mandate, to be reasonably linked to the purpose of the Act's unbundling provisions." *USTA v. FCC, 290 F.3d 415, 427* (D.C. Cir. 2002). Based on these rulings, the FCC in its 2003 *Triennial Review* order defined "impairment" as a condition in which competitive entry is "uneconomic" in the sense that the costs of entry exceed the potential revenues from entry. TRO at ¶84.

12. The Commission next applied its impairment analysis to make "national" findings about the need to unbundle various network elements. TRO at ¶23. The Commission's national findings were not, however, intended to be in any sense final. *Id.* One of the reasons the U.S. Court of Appeals had vacated the FCC's unbundling regulations was that they were based on a one-size-fits-all analysis of nationwide data that ignored the market facts particular to specific geographical areas. *USTA*, 290 F.3d at 422. The court ruled that impairment must be decided on a much more "granular," *i.e.,* local basis. *Id.* Accordingly, the

Commission issued its nationwide findings only as a starting point, and left it to the states to make the more "granular" and area-specific determination required by the Circuit Court. TRO at ¶118.

13. The *Triennial Review* decision gave two kinds of guidance to the states concerning their more focused inquiries. The first was to establish a set of "triggers" that would either require or permit the states to reverse the FCC's national finding on impairment as to a specific element. TRO at ¶186. In the case of switching, for example, the Commission established a process under which a state regulatory authority first examines a set of numerical triggers that, if present, require state authorities to reverse the Commission's impairment finding. If those triggers do not exist, the state authority then moves to the second step and examines whether market facts exist that show an absence of economic or operational barriers such that a state authority has discretion to reverse the FCC's impairment finding. TRO at ¶ 463. Importantly, the Commission made clear that state regulators should continue the unbundling requirement reluctantly and only as a last resort, considering short transitional periods of UNE availability even in cases where the evidence did not warrant reversing the FCC's national finding. TRO at ¶ 524.

14. The second kind of guidance the FCC provided to states entails a hierarchy of evidence in the impairment inquiry. TRO at ¶¶7, 507. The Commission found that "actual deployment is the best indicator of whether there is impairment, and accordingly evidence of actual deployment is given substantial weight in our impairment analysis" and should be the factor that states look to first in their more granular examinations. TRO at ¶461; *See also* TRO

at ¶510 ("The existence of a competitor that is serving the local exchange mass market with its own switch provides evidence that the mass market can be served effectively.).

II. Impairment Analysis for Local Switching

15. The FCC concluded in its *Triennial Review* order that, on a national basis, there would be competitive impairment without unbundling of mass market switching. TRO at ¶419. The bases for the FCC's conclusion were its finding that nationwide there had been only "minimal deployment of competitive LEC-owned switches to serve mass market customers" (TRO at ¶421) and its finding that "inherent difficulties arise from the incumbent LEC hot cut process for transferring DS0 loops." TRO at ¶422. The Commission found it extremely important to its conclusion of impairment that less than 3% of residential lines were served by CLEC owned-switches (TRO at ¶438) and that intermodal alternatives like cable facilities are not generally available to new competitors. TRO at ¶443. The FCC fully recognized, however, that local facts would often differ from the national facts, and therefore, left it to the state authorities to conduct more accurate, granular analyses of local switching in their jurisdictions. The degree to which CLECs have deployed mass-market switches and the degree to which hot-cuts have impeded such deployment differ on a regional basis, and the Commission left it up to state regulators to determine whether the FCC's national findings fit the particular facts of specific geographical markets. I turn next to that Alaska-specific inquiry.

The Facts in Alaska Differ Dramatically from the FCC's National Facts

16. The facts about local switching in Alaska are strikingly different from those upon which the FCC based its national finding of impairment in mass-market switching.

Unbundled switching has been available to CLECs in Anchorage since 1997. Competitive entrants into ACS' markets have not, however, generally used that option. Some competitive carriers like AT&T and TelAlaska have relied on resale of ACS' services. But the most significant competitive entrant into Alaska's local telephone market, GCI, has relied primarily on its own switches to serve its residential and business customers alike. As of November 2003, GCI was serving over one-third of all access lines combined in the LEC service areas of Anchorage (45%), Fairbanks (22%), and Juneau (30%) – and these percentages are merely the most recent available snapshots of a fast, upward trajectory in GCI's market share. GCI is serving its customers almost entirely over its own switches. ACS estimates that GCI is serving over 90,000 lines in Anchorage, Fairbanks and Juneau – 34% of the 263,000 total lines in those areas – over its own switch and transport facilities. Affidavit of Steve Pratt ¶2, 3, 4, 7. This represents the vast majority of GCI's lines. Indeed, GCI reports that it serves approximately 87% of its customer lines statewide through its own switch and transport facilities with leased local loops. GCI serves only approximately 5% of its customer lines through the UNE platform. GCI SEC Form 10-Q at 37 (Sept. 30, 2003). Those customers that GCI serves through UNE-P are in Fairbanks and Juneau. GCI serves 92% of its Anchorage lines using its own switches and transport connections.

17. Overall, GCI's competitive market shares in Alaska are many multiples of the nationwide market share figure from which the FCC inferred impairment due to mass-market switching. TRO at ¶438. Indeed, the FCC found less than 3% of mass-market loops nationwide to be served over CLEC-owned switches and hence found impairment. But GCI's market share in Anchorage of 45%, (92% of which lines GCI serves over its own switches), is

15 times greater than the market share on which the FCC relied. GCI's Juneau and Fairbanks market shares are also multiples of the national share underlying the FCC's impairment finding. There is strong indication in the *TRO* that the FCC would not have found impairment based on the market share of competitive switching in Alaska. For GCI's overall competitive market shares in Alaska are equal to or greater than the nationwide percentage of *business* lines (24%) that CLECs serve over their own switching facilities, which the FCC found sufficiently high to support a conclusion of non-impairment as to switching for DS1 or greater capacity loops.[4] TRO at ¶437.

18. In terms of facilities, GCI has its own Lucent 5E switches located in Anchorage, Fairbanks, and Juneau, as well as numerous remote switches collocated with ACS in each of those markets. I understand that GCI provides its own transport between its host and remote switches. Affidavit of Steve Pratt at ¶4. GCI reports in its SEC filings that from the switches it currently has in place it is capable of reaching 92% of local customers in Anchorage, 71% in Fairbanks and 48% in Juneau from its proprietary switches in each of these markets. GCI SEC Form 10-K at 32 (Dec. 31, 2002). ACS has comparable estimates of the reach of GCI's current switch facilities. Based on a conservative estimate and incomplete information regarding GCI's network facilities, ACS' figures are that GCI's switches reach

[4] The FCC found that CLECs were serving at least 13 million business lines as of year-end 2001 over their own switches (TRO at ¶437), a figure it found to constitute strong evidence against impairment in business switching. There were 53.7 million local business lines in the U.S. at year-end 2001 according to the FCC's 2001/2002 Statistics of Communications Common Carriers Report at p.22, of which the 13 million served over CLEC switches represented 24%.

about 92% of access lines in Anchorage, 77% of lines in Fairbanks, and 57% of lines in Juneau. Affidavit of Steve Pratt at ¶5.

19. The fact that GCI cannot today reach all customers does not, however, mean that GCI is competitively impaired. Indeed, such an argument for impairment would imply that even if GCI took 90% of local exchange customers in Anchorage, it would still be able to claim it is competitively "impaired" and demand unbundled switching from the incumbent that has only the remaining 10% of the market. But such a claim of impairment would defy common sense and sound economic policy. The fact that GCI's existing switches allow GCI potentially to capture half or more of the customers in each of ACS' LEC service areas demonstrates that GCI is unimpaired not only in *competing* but, insofar as switching is concerned, is unimpaired in *dominating* the markets it has entered.

20. The FCC has stated that the market for local switching should not be defined as being so small "that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market." TRO at ¶495. The FCC's admonition implies at a minimum that switching markets should not be defined in such a way that divides areas that could economically be served by a single switch. Simply to declare that markets should be defined as wire centers (or smaller) when there may be adjacent tandems or wire centers that could be economically served with some of the same switching capacity would be inefficient and would directly contradict the FCC's caution against artificially narrow market constructs. But neither should the definition of available scale be so distorted in the other direction as to make markets impractical in their breadth. Just as it makes no sense to define a market on a wire-center or tandem basis just because a

CLEC's existing switches do not reach customers in those tandems or wire centers, it makes no sense to define a market based on line capacity of a switch if some of the lines in a market so defined would be uneconomic to serve through the switch.

21. The correct definition depends on the scope and scale of customers that can be economically served from a given switch. GCI states that it serves all its customers in each LEC service area from a single 5E switch. If GCI can collocate a remote terminal and use an existing switch to serve those customers that GCI does not currently reach, then those customers should be included in the same market so long as the costs of collocation and transport do not render use of the existing switch uneconomic for those new customers. The mere fact that GCI would have to purchase a remote switch and either build or buy transport does of course mean that those new customers should be viewed as a separate market. Only if such costs are so high as to make it uneconomic or inefficient to use an existing host switch to serve those customers should the market be defined more narrowly. I have seen no evidence to suggest that GCI cannot continue to add remote switching capability and transport that extends the reach of its existing switches to new customers in a given ACS LEC service area. I therefore conclude based on the evidence available to me that the relevant geographic market for ACS-AN's switching UNE should be ACS-AN's exchange service territory, for ACS-F it should be that LEC's local service territory, and for ACS-AK it should be that LEC's service territory.

22. There appear to be no operational or economic barriers to entry in the absence of unbundled switching in any of these markets. If GCI wants to serve customers it does not currently reach over its own facilities, GCI may expand its facilities over time, as it has

successfully done to serve the vast majority of customers in these markets. In some instances, in the rural markets, GCI has used resale and UNE-P as interim means of serving customers while it has acquired additional switches and constructed additional collocations facilities, to which GCI then cut-over its resale customers.[5] So, recent evidence demonstrates that GCI has been able to expand the footprint of its facilities when it has made a business decision to do so. GCI is also actively pursuing another path to serving all customers over its own facilities. Instead of adding new switches and collocating new remotes to expand its network, it is using its cable network, which reaches over 95% of households in Alaska, to expand its facilities-based reach to telephone customers.[6]

23. GCI's Senior Vice President Richard Dowling has stated that GCI's cable telephone technology is working well and that "the preponderance of our residential service will be on cable."[7] GCI has made similar statements about the company's emphasis on cable telephony to investment analysts and in its SEC filings. *Id.* Taken together, the facts that GCI can already take the market-share lead in its key markets with its existing switches, that GCI

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[5] Declaration of Frederick W. Hitz, III, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, at ¶4.

[6] Prefiled Testimony of Dana Tindall, Sr. Vice president, Legal, Regulatory & Gov't Affairs, General Communication Inc., Before the Senate Committee on Commerce, Science and Transportation, Communications Subcommittee at 3 (April 2, 2003).

[7] *See* Anchorage Daily News at Section E-5, *Fresh Connections, GCI Plans to switch local customers over to its 'telephony' cable system* (Mar. 2, 2003). During its second quarter 2003 investor call, GCI announced its goal to roll out cable telephony to between 8,000 and 12,000 lines in 2004 and doubling deployment in the following year. General Communication, Q2 2003 Financial Release Conference Call, Event Transcript, Fair Disclosure Financial Network at 12 (July 31, 2003).

has demonstrated its ability to expand the reach of its switching facilities, and that GCI is beginning to use its ubiquitous cable network to reach telephone customers eliminate any impairment from the loops that GCI does not today reach through its own facilities. Although GCI's cable network may not reach certain areas in which businesses are concentrated, those are precisely the areas in which it is most economic for GCI to deploy its own switching and fiber, as it in fact has done.

24. The most basic proof of GCI's lack of impairment is its remarkable success in entering local exchange markets using its own, rather than unbundled, switching. GCI to date has captured approximately 45% of local exchange customers in Anchorage, approximately 30% in Juneau, and over 22% in Fairbanks. So rapid and successful has been GCI's competitive entry that GCI's own senior management has stated that ACS "is arguably no longer dominant." Rebuttal testimony of Dana Tindall at 9, U-96-89 (filed Sept. 29, 2003). Some comparisons help to put in perspective just how successful a competitor GCI has been. Entry of MCI and Sprint into long distance services in the wake of the AT&T divestiture and entry of DBS into the subscription video market are both generally considered examples of great competitive success. Yet GCI has outperformed both. In Anchorage, for example, GCI has already achieved a market share that MCI and Sprint together took more than a decade to achieve against AT&T after the 1984 divestiture. When the FCC declared AT&T to be non-dominant in 1995, AT&T still had 60% of the long-distance market.[8] And GCI's overall local market share in Alaska is already greater than the combined share of the video market that

[8] *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 at ¶ 68 (1995).

DBS operators have taken from cable operators.[9] By any measure, the ability of a competitor to enter a market and in a few years to take a 45% or even a 20% share is impressive, and strongly rebuts any inference of economically meaningful competitive "impairment."

25. In sum, then, the scale of CLEC competitive success and of self-provisioned CLEC switching are thus dramatically greater in Alaska than they are nationwide, and the granular market facts for Alaska bear no relation to the facts on which the FCC made its national finding of impairment in mass-market switching. Alaska differs in a further, important respect from the national picture. The FCC rejected the significance of "intermodal" alternatives ILEC switching in its national impairment analysis "especially since these intermodal alternatives are not generally available to new competitors." TRO at ¶443. But in Alaska, the most successful CLEC is also the owner of the monopoly cable network which, as discussed above, it has made a centerpiece of its competitive strategy in the local telephone market.

26. The above facts do not satisfy the FCC's numeric triggers for a finding of non-impairment in local switching. TRO at ¶462, 463. There are neither three CLECs using their own switches to serve mass market customers nor two independent wholesale suppliers of unbundled circuit switching in ACS' LEC service areas. However, the facts about local competition and switching in the three markets in question are even more compelling than the facts that would trip the numeric triggers. For under the TRO the RCA would have to find no impairment even if there were just three small CLECs using their own switches to serve a tiny

[9] As of June 2002, DBS subscribers comprised 20.3% of total MVPD households. *Annual Assessment of the status of Competition in the Market for the Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd 26901 at ¶ 58 (2002).

share of DS0 lines in the market. TRO at ¶462. But the competitive significance of just one CLEC with a 20 percent or higher market share and a network of its own switches is arguably far greater and is certainly strong evidence that competitive success in no way hinges on access to unbundled switching. The FCC has acknowledged that such evidence of competitive switching is, while weighty, not always dispositive on the question of impairment. Despite CLEC switch deployment, the FCC said, there could be operational or economic barriers that will impede the success of that deployment and call into question its competitive viability. But the evidence in ACS' LEC service areas reveals no such barriers, and makes their potential existence remote, at best. This is not a case where a CLEC has purchased switches and is finding the economics of their deployment to be precarious. It is instead an example of where such deployment has had dramatic success and where there are no barriers sufficient to render that deployment "uneconomic."

Hot Cuts and Impairment in Alaska

27. The Commission found hot cuts to be a reason why CLECs find it uneconomic to deploy mass-market switching and why CLECs often don't successfully compete with those switches they do deploy. TRO at ¶459. It is important to recognize, however, that the FCC did not equate hot-cut problems with impairment. Rather, the FCC viewed hot cut problems as one of the explanations for the low level of mass-market switching that CLECs were provisioning for themselves. But, as with all of the Commission's national findings in the TRO, this finding about hot-cut problems has no bearing where a CLEC has successfully deployed mass-market switching. In such cases hot-cut problems may exist but have not made it uneconomic for CLECs to self-deploy switches. The important evidence for the impairment

inquiry is the CLEC's successful switch deployment, not the incidents of hot-cut problems. To equate the hot-cut problems with impairment and discount the CLEC's actual success with its self-provisioned switches would turn the TRO on its head and eliminate any economic substance from the definition of "impairment." In Alaska, GCI's stunning success in acquiring market share using its own switches makes clear that, whatever problems might have risen with the hot-cut process, those problems did not render GCI's switching "uneconomic" or impair GCI's ability to compete.

28. What is interesting about GCI's allegations of hot cut problems (TRO at ¶468) is that GCI elected to provide its own switching despite those alleged problems. GCI has never purchased UNE switching from ACS in Anchorage, and only serves about six percent of its Fairbanks lines and ten percent of its Juneau lines using UNE-P or resale. Affidavit of Steve Pratt at ¶4. GCI may thus have found hot cut problems to pose a challenge, a nuisance, or a cost, but any such problems were not sufficiently great as to make it uneconomic for GCI to install its own switches and to rely on them as the principal means of serving its residential and business customers. Under the FCC's definition, then, GCI faced no impairment even if one takes as true its claims about the problems that it faced with hot cuts.

29. But perhaps more importantly, even if problems occurred in the past ACS now has a procedure in place for hot cuts that meets the actual demand for cut-overs that the company is receiving from CLECs. I understand from ACS that the company is now capable of processing 314 orders per-day for all markets. This number is in excess of the maximum number of customers ACS has recently been asked to cut over in a single day. In fact, if one were to take the peak cut-over days since June 2002 for Anchorage (211 cuts), Fairbanks (44),

and Juneau (38) and assume they all occurred on the same date, the total of 294 is below the number that ACS is now set up to process in a day. In a sample period from October 1st to December 15th 2003, the average number of daily orders (not all of which were cut-over orders) requiring central office work were, respectively, 88 in anchorage, 15 in Fairbanks, and 6 in Juneau. Affidavit of Steve Pratt at ¶8, 10. ACS is well equipped to process such batches and the hot cut process in Alaska is not the source of any competitive impairment.

30. In fact, it seems unlikely that the kinds of cut-over volumes at issue in Alaska even begin to approach the kind of volumes the FCC found to cause competitive problems. The FCC cited Worldcom, for example, as saying that the hot cut process, while allowing "a few thousand transactions per month" was inadequate because it could not provide "the million needed to bring competition to the mass market." TRO at ¶468, fn.1425. Those kinds of volumes are simply irrelevant to ACS's service area. ACS has, in fact, put in place a process capable of processing several thousand transactions per month. And in markets where ACS estimates that the total number of access lines is around 264,000 (combined total lines in Anchorage, Fairbanks and Juneau), (Affidavit of Steve Pratt at ¶7) nothing more is needed and no impairment can be inferred from any inability to cut over higher volumes. Certainly the idea that there are a "million needed" cut-overs to make mass market switching economic for CLECs has no bearing in a market where the total number of access lines in the state is well under one million, and where the leading CLEC already serves a substantial number of those lines.

31. To be sure, specific examples of problems with hot cuts might be held up by CLECs as causes of "impairment." But such anecdotal evidence, even if the anecdotes are

true, should receive very little evidentiary weight in light of the other market facts discussed above. As the FCC has said, evidence of actual market deployment should receive the greatest weight. In Alaska, there is actual deployment of CLEC switches, competitive success of the leading CLEC unparalleled elsewhere in the country, and there is a real alternative to the ILEC facilities should the CLEC eventually decide not to continue its successful UNE-L entry strategy. Weighed against such facts, complaints about occasional costs and problems of hot cuts pale and, even if they demonstrate the existence of occasional difficulties for competitors, they do not demonstrate meaningful impairment. For if they did constitute "impairment" sufficient to meet the courts' and the FCC's definitional standard, the actual market facts about switch deployment and competitive success would not be what they are.

III. Transport

32. The available evidence strongly suggests that transport facilities are not a source of competitive impairment in Alaska. From what I understand, GCI already self-provisions most of its local transport through its own fiber plant. In each of its LEC service areas, GCI uses its own fiber to connect its switch with the ACS offices in which GCI's remotes are collocated. Similar fiber resources apparently connect GCI's offices in Juneau and Fairbanks with ACS offices in those respective cities. Affidavit of Steve Pratt at ¶14. From what I understand, GCI does not purchase transport from ACS in Anchorage, the market in which GCI has already taken a 45% market share. And in Juneau and Fairbanks the only transport GCI has purchased from ACS is incident to the small number of customers GCI serves over UNE-P. *Id.*

33. While data showing the full extent of GCI's fiber facilities does not seem to be available, several factors in addition to the actual self-provisioning GCI now does for local telephony suggest that there are ample fiber resources for GCI and other CLECs. GCI, for example, presumably has significant fiber in place throughout Alaska for its cable television backbone. In addition, I understand that GCI has submarine cable landing at Whittier, Alaska that, with a spur to Juneau, extends to Anchorage, Valdez, and along the pipeline route to Fairbanks. *Id.* Finally, AFS is an additional provider of fiber transport on a number of routes in Alaska. Affidavit of Steve Pratt at ¶15. Although I have not seen data on the full extent of AFS' transport assets in Alaska, I understand that AFS has fiber in the Anchorage and Fairbanks local exchange service areas. GCI has stated that it has a fiber ring that it uses to connect to 22 office buildings, but I have seen no further detail from GCI about its fiber resources.[10]

34. Without a complete picture of competitive transport facilities, and data on the costs of fiber build out in Alaska's local telephone markets, it is difficult for me to analyze the transport market in Alaska. But two factors weigh very heavily against any finding or competitive impairment due to transport. The first is the actual experience of GCI in successfully providing its own transport. This factor alone, which the FCC says should receive substantial weight in the determination, greatly weakens the case for impairment. The second factor is that GCI's extensive cable network provides GCI with an alternative set of transport facilities which eliminate any possibility of impairment, especially as GCI pursues its

[10] *See Ex Parte* Letter to William Maher, Chief, Wireline Competition Bureau, FCC, from Frederick W. Hitz, III, Director, GCI, CC Dockets 01-338, 96-98, 98-147 (filed Nov. 21, 2002).

strategy of cable telephony. The RCA would benefit from receiving additional evidence from GCI on the existence of competitive transport facilities as such evidence would enable it to complete the analysis that so far shows no impairment on a number of transport routes in Alaska. Absent such evidence, the RCA should conclude from the information that has been made available that transport creates no competitive impairment in Anchorage, Fairbanks, and Juneau.

Loops

35. Very little information appears available about high capacity loops in Anchorage, Fairbanks and Juneau. GCI states that it currently owns the loop facilities that serve 25% of its retail lines. See Hitz, *supra* fn.10. Moreover, GCI has exclusive loop facilities for two subdivisions on Elmendorf Air Force Base. To get access to those customers, ACS would have to negotiate with GCI for facilities access. In addition, GCI's fiber rings would appear to place the company in good position to construct high capacity loops to business customers in proximity to the ring. But the data available to me does not permit me to reach any concrete conclusions about impairment due to high-capacity loops. The evidence that is available, however, weighs against such impairment in locations where GCI or other competitive carriers have loop facilities.

IV. Conclusion

36. Based on my analysis of the available date, I conclude that there is no competitive impairment in Anchorage, Fairbanks, or Juneau related to switching, transport, or high-capacity loops. The most salient evidence of non-impairment is that GCI has been self-provisioning these facilities and has had remarkable competitive success doing so. Any

finding of impairment in light of such evidence would reduce impairment to a weak and meaningless concept that does not meet the standard established by the courts and implemented by the FCC. To allow access to unbundled switching, transport or high capacity loops would not address any impairment suffered by competitors, but would merely provide them with a strategic option that they might find advantageous in some circumstances. The 1996 Act's unbundling provisions, however, are intended to redress competitive disadvantages, not to provide advantageous options to competitors that do not need them. The market evidence shows such unbundled options to be especially unwarranted in Anchorage, Fairbanks, and Juneau.

Further Affiant Sayeth Not.

Dated: January 12, 2004

Howard A. Shelanski

Subscribed and sworn to before me on this 12th day of January, 2004.

Notary Public
My Commission expires:

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	))))	R-03-07

NOTICE OF FILING ERRATA CORRECTION TO AFFIDAVIT OF HOWARD SHELANSKI

ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc. (collectively "ACS") hereby file a correction to the Affidavit of Howard A. Shelanski, previously filed on January 12, 2004.

The attached faxed Errata to Affidavit of Howard A. Shelanski corrects the omission of the word "not" in paragraph 21 of Mr. Shelanski's orginal affidavit. The original Errata to Affidavit will be filed when it is received.

Respectfully submitted this 30th day of March, 2004.

By Martha Beckwith
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STATE OF ALASKA

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In the Matter of the new Requirements of 47 C.F.R. § 51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies	))))	R-03-07

ERRATA TO AFFIDAVIT OF HOWARD A. SHELANSKI

I, Howard A. Shelanski, declare as follows:

1. I submit this declaration to correct an omission in my original January 12, 2004 Affidavit of Howard A. Shelanski filed with ACS' comments in this docket.[1]

2. In paragraph 21 of my affidavit, I stated in relevant part: "The mere fact that GCI would have to purchase a remote switch and either build or buy transport does of course mean that those new customers should be viewed as a separate market."

[1] Comments of ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc., *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communications Commission Triennial Review Order on Interconnection Provisions and Policies*, R-03-7(1) (Jan. 12, 2004).

3. This sentence should be corrected to state: "The mere fact that GCI would have to purchase a remote switch and either build or buy transport does not of course mean that those new customers should be viewed as a separate market."

Further Affiant Sayeth Not.

Dated: March 29, 2004

Howard A. Shelanski

Howard A. Shelanski

Subscribed and sworn to before me on this 29th day of March, 2004.

Melissa Martin

Notary Public

My Commission expires:

Jan. 14, 2006.

MELISSA MARTIN
COMM. #1310705
Notary Public-California
ALAMEDA COUNTY
My Comm. Exp. Jan 14, 2006